IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.No. 5333 OF 2000

S.Dhanasekaran .. Petitioner

vs..

1. Zonal Manager/Appellate Authority
Life Insurance Corporation of India
Southern Zonal Office
LIC Buildings, Anna Road, Chennai 2.

2.Senior Divisional Manager
Life Insurance Corporation of India
Madras Divisional Officer No.2
Anna Nagar Plaza
C-47, II Avenue, Anna Nagar,
Chennai 40. .. Respondents

For Petitioner .. Mr. C.Selvaraju, Senior Counsel

For Respondents .. Mr.M.Jagadeesan

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus as stated therein.

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O R D E R

The writ petition is to call for the records of the second respondent in his proceedings Ref.P&IR/D.O.II dated 14.09.1999 as confirmed by the first respondent in his proceedings No.Nil, dated 06.01.2000, and to quash the same, and consequently direct the respondents to reinstate the petitioner in service with all the consequential benefits.

2. The petitioner was appointed as sub-staff in the Life Insurance Corporation of India on 23.8.1993. On 27.2.1998 he accompanied the Assistant Administrative Officer for depositing a sum of Rs.1,86,095.55/- in the Bank. When he was waiting in the queue for remitting the cash, the Assistant Administrative Officer went inside to collect some demand drafts. While so, two persons came inside the bank and informed him that a time bomb had been planted in the Bank, and therefore he left the bank premises. When he came out, those two persons kidnapped him in an auto rickshaw and forced him to take some drinks. He became totally unconscious when they took him to various places and at last stabbed him in the stomach and snatched away the money and thrown him on the road side. A passer by reported the matter to the police, and the police took him to Stanley Hospital, where he was treated as in-patient till 16.3.1998. While he was in the hospital he was placed under suspension on the complaint given by the Assistant Administrative Officer as if he had run away with cash; the complaint was given only on the next day. Even before the completion of investigation, admittedly, the departmental proceedings were initiated, charges were framed, enquiry was conducted, show cause notice was given and thereafter the petitioner was dismissed from service on 14.9.1999 and the Department ordered recovery of Rs.1,86,095.55/- from him. Against that, he filed a writ petition (WP No.16738 of 1999), and the Court directed him to file an appeal before the appellate authority. Thereafter, an appeal was filed and that was rejected. Hence, the present writ petition.

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3. A counter has been filed by the respondents in which it is stated that the Assistant Administrative Officer, who accompanied the petitioner, went inside to present a challan asking the petitioner to withstand in the queue for remitting the cash. When she returned, the petitioner was not found and the cashier informed her that no cash was remitted and when the Assistant Administrative

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Officer searched for him, the petitioner was not found there. She immediately reported the matter to the Chief Manager of the Bank and also to the Senior Branch manager over phone. The matter was reported to the Divisional Office-II, Chennai on the same day. The petitioner absconded with Rs.1,86,095.55/- entrusted to him. A complaint was registered under Section 409 IPC for the aforesaid offence. Thereafter, the departmental proceedings have been initiated, and the charges were framed against the petitioner, and after enquiry he was found guilty of the charges. After issuing the show cause notice, final orders were passed on 14.9.1999 dismissing the petitioner from service and also for recovery of the misappropriated amount. The appeal filed by the petitioner also was rejected. There is no illegality in the enquiry proceedings or any mala fides.

4. The learned counsel for the petitioner submitted that the impugned order of dismissal is illegal. While the Life Insurance Corporation of India has filed a criminal case, simultaneously initiating departmental proceedings is bad in law. Further, witnesses before the Criminal Court were the same who were examined in the enquiry. While that be so, the enquiry should not have been proceeded till the criminal case ended. Inasmuch as during the pendency of the criminal case, the departmental enquiry had been conducted on the very same charges, the departmental enquiry is not legally valid and no consequence will flow. Therefore, the Order of dismissal is liable to be set aside.

In support of his contention, he referred to the judgment of the Supreme Court in M.PAUL ANTHONY v.. BHARAT GOLD MINES LTD. [AIR 1999 SC 1416] where it was held as follows:

> " Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

He also relied upon the judgment of the Supreme Court in CHANDRAIAH v.. STATE OF A.P. [2003 AIR SCW 5964]. In that case, when the offence under Section 409 IPC was not proved, and that it was found to be a negligent act, the case could not be resulted in an order of

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dismissal.

He further relied upon another judgment in KALLASH NATH GUPTA v.. ENQUIRY OFFICER, ALLAHABAD BANK [AIR 2003 SC 1377] wherein it was held that the punishment is disproportionate to the charges.

6. The learned counsel for the petitioner further submitted that the amount of Rs.1,86,095.55 from the back-wages and the petitioner may be reinstated in service.

7. The learned counsel for the respondents submitted that these judgments will not apply to the facts of the present case. The petitioner deliberately left the bank in order to misappropriate the entire amount. Further, there was no violation of procedure in the departmental enquiry. What is the punishment to be given is left to the discretion of the Appointing Authority - the Disciplinary Authority found it fit and proper to dismiss the petition. That Order cannot be interfered with in a writ petition. He also relied upon the following judgments:

In DEPOT MANAGER, A.P. STATE ROAD TRANSPORT CORPORATION v.. MOHD. YOUSUF MIYA [1997(1) Supreme 565] the Supreme Court has held that there would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case unless charge in criminal case was of grave nature involving complicated questions of fact and law. What is required to be seen was whether departmental enquiry would seriously prejudice delinquent in his defence at trial in criminal case.

In STATE OF RAJASTHAN v.. B.K.MEENA [1997 (I) LLJ 746] the Supreme Court has held as follows:

> " It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges..... It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The Disciplinary proceedings are meant not really to punish the guilty but to keep the administrative

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machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasis some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course."

8. The main contention of the petitioner is that the petitioner while he was standing in the queue, those persons came to him and told him that a bomb will explode and because of that he went out of the bank with the cash to save his life. Thereafter, he was taken away by some persons. This plea was rejected in the departmental enquiry and that cannot be said to be unacceptable. The main contention that the petitioner was stabbed by two persons and he was admitted in the hospital and therefore he was accosted under threat of injuries, is unacceptable. The petitioner himself has stated that he left the bank around 11.00 a.m. But, till 12.30 night the two persons and the petitioner were sharing drinks and during the midnight some altercation arose and in that he was stabbed. Therefore, the contention that two strangers took him away under threat of injuries does not appear to be true. It appears that the petitioner went along with those two persons with the money and they were also taking drinks till late night. Therefore, the entire case of the petitioner is falsified and therefore during the departmental enquiry the Enquiry Authority had rightly come to the conclusion that the petitioner was guilty of misappropriating the amount of Rs.1,86,095.55/-. Therefore, the procedure adopted is not illegal. The punishment of dismissal from service cannot be said to be excessive considering the facts and circumstances of the

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case. Further, the quantum of punishment cannot be interfered with unless it is shocking to the judicial conscious. Considering the facts and circumstances of the case, this Court cannot come to the conclusion that the conclusion is shocking to the judicial consciousness. Therefore, there is no merit in the writ petition and the same is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Zonal Manager/Appellate Authority
Life Insurance Corporation of India
Southern Zonal Office
LIC Buildings, Anna Road, Chennai 2.

2. The Senior Divisional Manager
Life Insurance Corporation of India
Madras Divisional Officer No.2
Anna Nagar Plaza
C-47, II Avenue, Anna Nagar,
Chennai 40

1 cc to Mr. S. Mani, Advocate, SR. 57459
1 cc to Mr. M. Jagadesan, Advocate, SR. 57023

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MDR (CO)
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